

Fair Labor Standards Amendments of 1972

H. R. 7130

1. Section 13 of H. R. 7130 adds a new Section 15 to the Age Discrimination in Employment Act of 1967. Section 15 deals with "NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL GOVERNMENT EMPLOYMENT."

2. The purpose of new Section 15 is to require that all personnel actions affecting employees or applicants in executive agencies be free of discrimination based on age.

a. Its sanctions include:

(1) Appeals to the Civil Service Commission and appropriate remedies such as reinstatement or hiring;

(2) After unsuccessful appeal to the Civil Service Commission, civil action by an aggrieved employee or applicant; and

b. Section 15 (b) authorizes (line 21, page 47 of the bill) the Civil Service Commission to grant reasonable exemptions from Section 15 for any position for which the Commission establishes a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification

necessary to the performance of the duties of the position.

(The House of Representatives on 27 January 1972 defeated H. R. 8085 which contained a similar feature authorizing the President to exempt positions from maximum age requirements for appointment to executive agencies.)

3. In effect, Section 15 makes illegal any personnel action based solely on age. For example, it is doubted whether a minor of say age 12 could be legally refused a position under this provision of law if he or she otherwise qualifies. In addition, the provision would appear to conflict with existing law which establishes mandatory retirement ages. Mandatory retirement for age is clearly "discrimination based on age" which is made illegal by Section 15 which requires that all personnel actions "shall be made free from any discrimination based on age." A similar conflict was resolved in the Age Discrimination Employment Act of 1967 (P. L. 90-202) in Section 4(f)(2) of that Act which makes it clear that it is not unlawful to observe the terms of plans such as a retirement plan.

4. Unfortunately, the resolution of the conflict in the 1967 Act does not carry over to Section 15 of H. R. 7130 because Section 13 of H. R. 7130 specifically excludes the United States from the definition of employer under the 1967 Act. Actually, although Section 15 is technically an amendment to the 1967 Act, it stands by itself and is therefore not qualified by any of the

conditions of the 1967 Act, administration, sanctions, definitional terms or otherwise.

5. In order to resolve the existing conflict between Section 15 and other provisions of law that apply to Federal employees, it is recommended that Section 15 be technically clarified by adding the following subsection:

"NONDISCRIMINATION ON ACCOUNT OF AGE IN FEDERAL
GOVERNMENT EMPLOYMENT"

"SEC. 15...

"(f) Nothing contained in this section shall affect actions taken pursuant to statute concerning mandatory retirement or separation in the interests of the United States."

4 August 1972

Pursuant to Mr. Colby's instructions on 2 Aug., the attached was prepared, concurred in by OGC and OP, and presented to Robert Vagley, House Education and Labor Committee staff. His reaction was that the position seemed eminently sound and he saw no reason why an appropriate amendment could not be inserted into the bill, and he will advise if any problems arise. I stressed that we did not want this position to be attributed to the Agency and that we were providing this to him on a nonattributable basis.

LLM